Supreme Court, U.S.
FILED

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NO.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1996-1997

MICHAEL WEISS

Petitioner

versus

MORENO VALLEY UNIFIED HIGH SCHOOL DISTRICT; MORENO VALLEY UNION HIGH SCHOOL DISTRICT BOARD OF EDUCATION MEMBERS; MORENO VALLEY PUBLISHING COMPANY; DOES 1 THROUGH 20 INCLUSIVE

Respondents

PETITION FOR WRIT OF CERTIORARI, TO NINTH CIRCUIT COURT APPEALS

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37 pp

I. QUESTIONS FOR REVIEW

1. Despite advance Notice of Settlement, could Ninth Circuit issue its initial decision; and, then later deny a petition for rehearing despite mootness..

2. Are FRCP 11 sanctions proper against an attorney because he challenged the standing of opposing attorneys under the totality of circumstances in this case.

3. Does 28 USC 1927 authorize payment of $5000 to the US District Court Clerk for unnecessary work.

4. Is Due Process Clause satisfied by one sentence FRAP 38 OSC from Ninth Circuit.

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IV. REFERENCE TO OFFICIAL REPORTS: None.

V. TRIAL COURT JURISDICTION: 28 USC 1331, 1343; and 1367.

VI. SUPREME COURT JURISDICTION: Certiorari under 28 USC 1254(1). This Petition is timely under Rule 13.3 as it was filed within 90 days of the Ninth Circuit Order Denying a petition for rehearing dated July 15, 1996.

VII. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED: 5th Amendment Due Process Clause, First Amendment Petition Clause and Article III; 28 USC 1927; FRCP 11, FRAP 38 and California Education Code 35205 and 35163.

VIII. REASONS FOR WRIT: Appendix Tab 2 is the Ninth Circuit Memo at issue herein

which at page 3 holds that "Weiss was not denied due process and his First Amendment rights were not violated," which thus placed the Constitutional issues squarely before this Court for de novo review. Another reason for seeking this Writ is because of the need of this Court to use its supervisory powers to police against abusive judicial authority due to the fact that the Ninth Circuit issued FRAP 38 without adequate notice and opportunity to be heard and despite mootness; and because the Ninth Circuit upheld a 28 USC 1927 sanction order beyond the definition of "costs" and hence beyond is subject matter jurisdiction; and, because of retaliation in refusing to acknowledge that settlement between the parties mooted out the appeal. This is because Ninth Circuit Judges Wallace,

Browning and Farris presided in the Maxie appeals in which Maxie challenged the authority of the Special Administrator of his sons Estate to settle the Estates causes of action for $500,000, alleging fraud insofar as she claimed to be representing the Estate interests insofar, as she declared under penalty of perjury that the Estate was penniless and kept the $500,000 all for herself. Maxie brought an Emergency Writ seeking to stay settlement (see US S Ct Case # 96-5023 Appendix to Writ Tab #14 "Appellants motion for stay of settlement in the trial court is denied.") Then Maxie brought appeals challenging the settlement as a product of fraud and Ninth Circuit Judges Wallace, Browning and Farris held that the settlement mooted out each and every issue on

appeal. Now in this case a settlement was reached by Maxie's attorney Weiss yet Ninth Circuit Judges Wallace, Browning & Farris award double costs to Moreno under FRAP 38 after receiving notice of the settlement between attorney Weiss and Moreno.

IX. STATEMENT OF THE CASE:

1. Appellants Appendix Tab 7 #2 contains the USDC docket sheets, from which the following statement of the case, taken in conjunction with other record evidence is tendered. Tab 7#2 at entry #3 states: "3-21-94 Default entered as to defendant Moreno." Entry #4 shows that on 4-18-94 the District Court issued its OSC re Dismissal for Lack of Prosecution, which spurred Weiss to seek a default Judgment or face dismissal of his clients lawsuit. Entry #13 shows that **all** proceedings

regarding the Application for Default were referred to Magistrate Groh and Moreno's Motion For Sanctions was part and parcel of said referral but the District Court itself ruled on that Motion. Entry #26 shows that on 6-26-94 Magistrate Groh filed his Report and Recommendation re Default Judgment, in which he determined that there was no proper service of Summons and Complaint upon Moreno; and, that he never reached the issue of Moreno being represented by the law firm of Leibman, Reiner et al. The latter issue was the one the District Court awarded sanctions on. Entry #33 states "7-11-94 Order...that report and recommendation of US Mag Judge be approved and accepted in this case." Entry #38 shows that Leibman, Reiner filed its Motion for Sanctions on June

28, 1994 with a hearing date of July 11, 1996 in violation of USDC Local Rule 7.4 and 16.10 (cited below) which required that said motion be **filed** 20 days before the hearing date, since it was filed 13 days before the hearing date; and, more importantly because it was filed before (not after) the entry of the District Courts final order.

"7.4 Notice and Service of Motion. The notice of motion and all moving papers in support thereof shall be filed with the Clerk not less than twenty (20) days prior to the Motion Day for which the matter is noticed."

"16.10 Filing Date for Attorney's Fees. *Any* motion or application for attorney's fees shall be served and filed within thirty (30) days *after* the entry of judgment or other

final order, unless otherwise ordered by the Court. Such motions and their disposition shall be governed by Local Rule 7." Entry #29 shows that attorney Weiss was substituted out of the case on June 29, 1994. From June 30 until July 19, attorney Weiss was in Iceland. Entry #34 indicates that on 7-11-94 "the Court ...having *heard* statement of counsel, Michael Alan Weiss... is ordered to pay sanction in the amount of $4062.35 forthwith and ...$5000 for unnecessary work shall be paid to the Clerk of the Court. It was physically impossible for the USDC to hear from attorney Weiss since he was out of the County in Iceland. The Reporters Transcript indicates that the USDC knew of this yet said "That's where he should practice law because from what we have seen of this

lawyer, not only in this case but in another case, he appears to be totally inept." (See the RT in Appendix Tab 7 at page 3:22-25.) Entry #34 went on to state that the Court shall issue an Order; but it never did as required by FRCP 58 ("Every judgment shall be set forth in a separate document. A judgment is effective only when so set forth and when entered as prescribed in Rule 79(a).") See Bankers Trust Co. v. Mallis (98 S.Ct. 1117, 435 U.S. 381, 55 L.Ed.2d 357); United States v. Indrelunas (93 S.Ct. 1562, 411 U.S. 216, 36 L.Ed.2d 202); and Sanders v. Los Angeles Unified School Dist. (C.A.9 (Cal.) 1992, 979 F.2d 855). Entry #39 shows that the USDC took off calendar Weiss' Motion for Reconsideration. Thereafter Weiss filed a Request for Oral Argument since he had

never once appeared before the District court; wanted to know what other case the District Court had referred to; and, had new and further evidence to present. But this document was not even listed on the Docket Sheet Registry, in violation of FRCP 79(a), let alone considered.

2. The docket sheets for the Ninth Circuit [found in Tab 7], in conjunction with other record evidence reveal the following statement of the case: On 5-30-96 Weiss filed Notice of Settlement with Moreno. This mooted out any and all issues between him and Moreno on the appeal. However, on 6-20-96 the Ninth Circuit affirmed the USDC and required Weiss to pay double costs under FRAP 38 to Moreno. On 6-28-96 Weiss filed a Motion for Reconsideration regarding mootness but the Ninth Circuit denied

same on 7-15-96 without explanation.

X. ARGUMENT FOR WRIT:

3. Weiss contends the Ninth Circuit retaliated against him on the mootness issue because that issue was the bone of contention in the Hamilton-Maxie Cases; see this Courts Cases # 96-5018; 96-5023; 94-8933; and 92-8916. In the Hamilton Cases attorney Weiss on behalf of his client Maxie, contended that a $500,000 settlement negotiated by an Estate Administratrix did not moot out an appeal regarding intervention and other issues by the father of the decedent because the settlement was a product of fraud since she never represented the Estates interests, but rather only her own interests which proposition was supported by her Declaration to the Probate Court that the Estate was penniless. Judicial

notice is requested to establish that Ninth Circuit Judges **BROWNING, WALLACE and FARRIS** presided on both the Hamilton and Moreno Cases. See US S Ct Case #96-5023 Appendix to Writ at Tabs 7 which states: "Maxie's appeal of the District Courts denial of his motion to intervene is moot because the underlying action has been dismissed....Because Maxie's appeal from the District courts denial of his motion to intervene and is moot and because he lacks standing to appeal the District Courts dismissal of Hamilton's action, we dismiss his appeal." See US S Ct case #96-5023 at Appendix Tab 10 which is a 7-21-94 Order (by Judge Farris which states: "Plaintiff-appellee's motion to dismiss the appeal as moot is granted. See US v Ford (cite omitted) (dismissing appeal from decision of motion to

intervene as moot where underlying action was terminated," See US S Ct Case #96-5023 Appendix to Writ at Tab 5 which is a 4-6-95 Order (by Judge Browning) stating "Appellees motion to dismiss the appeal as moot is granted. See US v Ford (cite omitted). All pending motions are denied as moot."

4. The Ninth Circuit Docket Sheet 4-11-96 entry and Tab 3 to his Appendix shows that the Ninth Circuit issued its FRAP 38 OSC to Weiss; but, it was a one sentence document which did not comply with the rudiments of providing notice at a meaningful time in a meaningful manner. In the Hamilton Case a similar one sentence FRAP 38 OSC was issued to Weiss, (see US S Ct Case #96-5023 at Appendix Tab #2) which was challenged there, as is here, since it violates the Fifth

Amendment Due Process Clause. More specificity is required to make said notice meaningful per the Advisory Committee notes behind FRAP 38 which state: "1944 Amendment: The amendment requires that before a court of appeals may impose sanctions, the person to be sanctioned must have notice and an opportunity to respond. The amendment reflects the basic principle enunciated in the Supreme Court's opinion in Roadway Express, Inc. v. Piper, 447 U.S. 752, 767 (1980), that notice and opportunity to respond must precede the imposition of sanctions. A separately filed motion requesting sanctions constitutes notice. A statement inserted in a party's brief that the party moves for sanctions is not sufficient notice. Requests in briefs for sanctions have become so commonplace

that it is unrealistic to expect careful responses to such requests without any indication that the court is actually contemplating such measures. Only a motion, the purpose of which is to request sanctions, is sufficient. If there is no such motion filed, notice must come from the court. The form of notice from the court and of the opportunity for comment purposely are left to the court's discretion."

Attorney Weiss challenged the lack of opportunity to respond to the District Courts sanction order insofar as its statement to the effect that "because from what we have seen of this lawyer, not only in this case but in another case, he appears to be totally inept."

5. As for the District Courts "excess" cost sanction authorized by 28 USC 1927,

Weiss contends that he was sanctioned beyond the scope of "costs" as authorized by the statute.

6. "A Section 1927 provides that lawyers who multiply court proceedings vexatiously may be assessed the excess "costs" they create. Courts generally have defined costs under s 1927 according to 28 U.S.C. s 1920, which enumerates the costs that ordinarily may be taxed to a lo920 and s 1927 should be read together as part of the integrated statute approved in 1853. In the absence of express modification of those provisions by Congress, however, we should not look beyond the Act for the definition of costs under s 1927. But s 1927 does not distinguish between winners and losers, or between plaintiffs and defendants. The statute is ... concerned

only with limiting the abuse of court process." Roadway Express, Inc. v. Piper (100 S.Ct 2455; 477 U.S. 752; 65 L.Ed2d 488)

7. Although s 1927 is concerned with the "excess" (not the regular costs) the USDC chose an arbitrary, capricious and discriminatory $5000 excess cost figure out of the clear blue sky. 28 USC 1920 does not include unnecessary use of the court's time as a cost any more than it does the cost of calling a jury. The $5000 amount was on top of the $4062.25 separately awarded attorney fees and costs, see Tab 7#28 - Declaration of J. Michael Declues. Attorney Weiss did not, as a matter of law, multiply the case and controversy because his client Gilliam filed a Request for Default and Application for Entry of Default.

Furthermore neither FRCP 55 nor the Local Rules required Weiss to mention that he was allegedly in close contact with Moreno's attorneys, Leibman, Reiner et al in the Request for Default. The USDC and Ninth Circuit say he did but they cited not one case, statute, rule nor regulation to support it; once again making up something out of the blue and depriving Weiss the opportunity at least to distinguish it. Since neither FRCP 55 nor any Local Rule of Court, nor any citation of authority from the USDC required such disclosure in a Request for Default, no FRAP 38 sanctions could be awarded because Weiss had good ground to show the USDC abused its discretion in awarding them. There was no clearly established law on the topic; and, this case appears to be one of first

impression.

8. "The court also noted that the cost of bringing the jury panel was $2,074. The court then imposed a sanction "under [1927] of Title 28 in the amount of $2,000." The court lacked the statutory authority to do so. Excess costs recoverable under 28 U.S.C. Sec. 1927 include only those taxable costs enumerated in 28 U.S.C. Sec. 1920 (costs taxable to a losing party). Roadway Express Inc. v. Piper, 447 U.S. 752, 757-60, 100 S.Ct. 2455, 2459-61, 65 L.Ed.2d 488 (1980). The cost of summoning a jury is not expressly set forth in section 1920 as an excess cost." United States v. Austin (749 F.2d 1407, C.A.9 (Nev.) 1984)

9. Under the above-cited Austin Case Ninth Circuit precedent the $5000

sanction was improper.

10. To award $5000 payable to the Clerk of the Court for unnecessary work raises conflict of interest concerns as expressed in TUMEY v. OHIO (47 S.Ct. 437, 273 U.S. 510, 71 L.Ed. 749). If that $5000 is going to the Judge or the Clerk, directly or indirectly, there is indeed a serious conflict of interest. Without a proper check over such 1927 sanctions the USDC Central District of California coffers grow larger and larger by the day.

11. When this is considered along with the fact that the USDC lambasted Weiss as one of the worst attorneys it has seen because of what he did in another case (case unidentified), was totally inept, and should be practicing law in Iceland, a reasonable man would question whether

the scales of justice were being held evenly. As required by the Fifth Amendment Due Process Clause, the First Amendment Petition Clause and Article Three, a reasonable man could question whether attorney Weiss was before an impartial adjudicator as he was entitled to, per Peretz v. United States (111 S.Ct. 2661, 501 U.S. 923, 115 L.Ed.2d 808); GRAY v. MISSISSIPPI (481 U.S. 648; 107 S. Ct. 2045; 95 L. Ed.2d 622); and BRADLEY v. FISHER (80 U.S. 335; 20 L. Ed. 646 at page 300). By refusing to identify this other case Weiss was involved in the USDC once again makes up things out of the blue and deprives Weiss of the opportunity to at least meet the challenge and deprive him of fundamental due process. Although 2 USDC Minute Orders indicated that another Order would

follow regarding the sanctions, and since it never did, once again a reasonable man could question whether Weiss was appearing before an impartial judge and being afforded due process of law. Finally the refusal of the USDC to entertain oral argument despite a written request for same by attorney Weiss is the epitome of unfairness and oppression, especially since Weiss never once had the opportunity to appear before the USDC in this case.

12. Weiss in not mentioning the alleged close contact with Moreno's attorneys Leibman, Reiner et al. in the Request for Default was at best, nothing more than simple negligent conduct which could not support a 28 USC 1927 sanction per the below cited MGIC 9th Circuit precedent.

13. "II [1] Rule 11...applies only to the initial signing and imposes no continuing duty on the signer. Cunningham v. County of Los Angeles, 879 F.2d 481, 490 (9th Cir.1988), cert. denied. 493 U.S. 1035, 110 S.Ct. 757, 107 L.Ed.2d 773 (1990). It does not provide sanctions for failing to prepare and sign a document. United Energy Owners Comm. v. United States Energy Mgm't Systems, 837 F.2d 356, 364-65 (9th Cir.1988). [2] The district court made no specific finding of bad faith. Although it characterized Simpson's trial as "an abuse of this system" and felt that McKenna should have realized its suit against Simpson had no content by the time of immediate trial preparation, such observations are as consistent with negligence as with bad faith." MGIC Indem. Corp. v. Moore (952

F.2d 1120, C.A.9 (Cal.) 1991)

14. Weiss contends this Court must police the Ninth Circuit to prevent abuse of the judicial process; to prevent the appearance of abuse of the judicial process; and, also that the Ninth Circuit needs guidance on the issues of mootness and standing. See Hedges v. Resolution Trust Corp. (32 F.3d 1360, C.A.9 (Ariz.) 1994) which involved attorney standing; but, the opinion did not contain one word about it.

15. Weiss contended that Moreno's alleged attorneys Leibman, Reiner et al did not have authority to represent Moreno for three reasons: (a) they could not represent both the Board of Education as well as its members when the later were sued in their individual capacities (see Appendix Tab 7#21 -Declaration of J.

Michael Declues at paragraph 2: "I have been assigned to represent the Moreno Valley Unified School District and the individual Board members in the above-captioned matter." Appendix Tab 7 also includes Mr Gilliam's Complaint which at paragraph 2 stated: "Defendants Moreno Valley Union High School District Board of Education members Tracy Vackar, Frank West and Kelly Gillum, are sued in their individual capacities only..." Such conflict of interest is prohibited pertinent rules and regulations as noted by Young v. United States ex rel. Vuitton et Fils S.A. (107 S.Ct. 2124, 481 U.S. 787, 95 L.Ed.2d 740). Because (b) Weiss had asked Leibman, Reiner many times to show their authority as per California Education Code 35205 and 35163 cited just below, but they never did.

16. EDC 35205. "The governing board of any school district may contract with a qualified attorney in private practice to provide legal services and compensation of this attorney in private practice *pursuant to contract* under this section shall be a proper use of school district funds."

17. EDC 35163. "Every official action taken by the governing board of every school district shall be affirmed by a formal vote of the members of the board, and the governing board of every school district shall keep minutes of its meetings, and shall maintain a journal of its proceedings in which shall be recorded every official act taken."

18. Attorney Weiss had every right in the world to challenge these attorneys standing per Tab 7#21 and RIO GRANDE

IRRIGATION & COLONIZATION CO. v. GILDERSLEEVE (19 S.Ct. 761, 174 U.S. 603, 43 L.Ed. 1103), as well as UNITED STATES v. HVASS (78 S.Ct. 501, 355 U.S. 570, 2 L.Ed.2d 496) read in conjunction with USDC Local Rule 2.2.5.2.

19. "2.2.5.2 Form of Appearance. A law firm may appear in the following form of designation or its equivalent: John Smith A Member of Smith and Jones, P.C. Attorneys for Plaintiff

20. Neither the USDC Local Rules, nor the FRCP contained any authority to informally represent a party in litigation pending before the Court.

21. N.L.R.B. v. Truitt Mfg. Co. (76 S.Ct. 753, 351 U.S. 149, 100 L.Ed. 1027) (unfair labor practice case) is cited for the proposition that the refusal of Moreno alleged attorneys Leibman, Reiner

et al., to produce proper proof of attorney representation was proof of bad faith on their part, just like when the Union refused to produce authorization cards signed by employees. And because (c) Weiss's client Mr Gilliam, Principal and Administrator of the Moreno School, told him that it was reported out of a Board of Education meeting that O'Melveny & Myers represented Moreno in his lawsuit. Since Leibman, Reiner refused to produce proof of standing Weiss subpoenaed it see Tab 7#35. The SDT Response is found in Tab 7#40 which contains Moreno's Board of Education Minutes for 5-4-96 which state: "Mr. West reported out of closed session that the Board discussed...pending litigation... It had been reported out [that] in closed session in April 19, 1994 that O'Melveny

& Myers would represent the District in the Gilliam versus Moreno Valley lawsuit. **This was reconsidered** and the Board designated that Mr. J. Michael Declues of Leibman, Reiner, McNeil & Walsh will continue to represent the District, pending a decision from the JTPA on coverage." (Emphasis added) This evidence showed that O'Melveny & Myers, not Leibman, Reiner et al was designated (but designation is not equivalent to the required contract per Education Code 35205) to represent Moreno pending a decision on whether its insurance consortium would pick up the attorney fees.

22. Medo Photo S. Corp. v. National Labor R. Board, (64 S.Ct. 830, 321 U.S. 678, 88 L.Ed. 1007) and N.L.R.B. v. Local Union No. 103, Intern. Ass'n of Bridge,

Etc. Workers, AFL-CIO (98 S.Ct. 651, 434 U.S. 335, 54 L.Ed.2d 586) are unfair labor cases dealing specifically with the issue of when a Union attains majority standing which enables it to negotiate with an employer on behalf of the employees. If an objectively reasonable doubt exists about the Union's standing a certification election may be demanded by the employer. What constitutes a good faith reasonable doubt should apply to our case as well. Since the law is not clearly established, this case presents the opportunity for this Court to adopt its reasoning. As it turned out Leibman, Reiner et al did not in fact represent Moreno at the time; but, Magistrate Groh never reached the attorney standing issue and neither did the District Court nor the Ninth Circuit. Nonetheless attorney

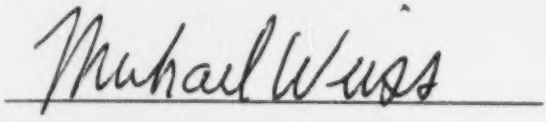
Weiss was sanctioned 2/3rds of his yearly income of $15,173 (see Appendix Tab 7#40 [Income Tax 1040 return]. The Ninth Circuit refused to allows Maxie the opportunity to proceed in forma pauper is despite evidentiary support regarding same, and despite notice that this Court had theretofore recently granted hin in forma pauper is standing (see US S Ct Case #96-5023 Appendix Tab 3-"Order: Appellant Maxie's motion for leave to proceed in forma pauper is on appeal is denied ... No motion for reconsideration, clarification or modification of the order shall be filed or entertained."

XI. CONCLUSION Weiss pray the Court entertain his petition and simply issue a summary affirmance or reversal, perhaps even with guiding instructions. Weiss recognizes the Court has many other cases

involving greater concerns and has limited resources spend in administering justice and therefore does not expect extensive consideration by this Honorable Court. Attorney Weiss recognizes that in this Courts 1995-1996 term, 12 of the 75 signed opinions came from the Ninth Circuit and that 10 of the 12 were reversed. Attorney Weiss further recognizes that for your 1996-1997 term 15 (nearly 1/3) of the cases you accepted for review came from the Ninth Circuit. Failure to police and supervise the abuse attorney Weiss suffered alone and by himself in this case due to a good faith challenge to attorney standing in but one document will result in sanctions which exceeded his yearly income. That would be a result that is oppressive, constitutionally defective, and otherwise

prohibited by 28 USC 1927 under the totality of circumstances.

RESPECTFULLY SUBMITTED,



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Respondents

APPENDIX FOR
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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED JUL 15, 1996

ORDER

Before: BROWNING, WALLACE, and FARRIS, Circuit Judges.

The motion for reconsideration of decision is denied.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED JUN 20, 1996

MEMORANDUM

Appeal from the United States District Court for the Central District of California Edward Rafeedie, District Judge, Presiding

Argued and Submitted March 7, 1996

Pasadena, California

Before: BROWNING, WALLACE, and FARRIS, Circuit Judges.

Weiss appeals from the district court's order imposing sanctions pursuant to Federal Rule of Civil Procedure 11 and 28 U.S.C. 1927. The district court had jurisdiction over the underlying action pursuant to 28 U.S.C. § 1343. We have jurisdiction over this timely appeal

pursuant to 28 U.S.C. 1291. We affirm. Pursuant to Federal Rule of Appellate Procedure 38, we also impose double costs on Weiss for filing this frivolous appeal.

We review an order imposing Rule 11 sanctions for an abuse of discretion. Cooter & Gell v. Hartmarx Corp. 496 U.S. 384, 405 (1990). We review all aspects of sanctions imposed pursuant to 28 U.S.C. § 1927 for an abuse of discretion. In re Keenan Management Co., Nos. 94-15713 and 94-16135, slip op. 1949, 1958 (9th Cir. Mar. 1, 1996) (Keegan)

Moreno Valley Union High School District (Moreno) complied with Rule 11's procedural requirements and Weiss had the benefit of Rule 11's safe harbor. Moreno served the motion for sanctions on May 25, 1994, and waited at least 21 days

before filing it on June 20, 1994. In any event, Weiss had no intention of seeking refuge in the safe harbor, as he filed his opposition to the motion for sanctions on June 10, 1994, before Moreno even filed its motion.

Weiss unpersuasively argues that he objectively and subjectively believed that Moreno had never authorized Liebman, Reiner, Nachison & Walsh (Liebman) to represent it. The district court's finding of bad faith stems from Weiss's decision to apply for default without informing the court that he had been in close contact with Liebman. The district court specifically found that Weiss acted in both subjective and objective bad faith in filing his frivolous application, and these findings were not clearly erroneous. The district court's

imposition of sanctions under Rule 11 and section 1927 was therefore not an abuse of discretion. Townsend v. Holman Consulting Corp., 929 F.2d 1358, 1362 (9th Cir. 1990) (en banc); Keegan, slip op. at 1959.

Weiss was not denied due process and his First Amendment rights were not violated. Weiss's assertion of judicial bias is frivolous. See United States v. Studley, 783 F.2d 934, 999 (9th Cir. 1986).

The district court also did not abuse its discretion in determining the amount of the sanctions. Weiss's assertion that attorneys are not awarded travel time is meritless. See Nilsson Robbins. Dalgarn. Berliner, Carson & Wurst v. Louisiana Hydrolec, 854 F.2d 1538, 1547 (9th Cir. 1988) (within

district court's discretion to award travel expenses). In addition, Weiss's insistence that his financial status renders the award unconscionable is rejected. It was Weiss's burden to produce probative evidence of his inability to pay and he failed to do so. See Gaskell v. Weir, 10 F.3d 626, 629 (9th Cir. 1993).

Pursuant to Federal Rule of Appellate procedure 38, we award Moreno double costs for having to respond to Weiss's frivolous appeal.

AFFIRMED.

Note: This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED APR 11, 1996

ORDER

Before: BROWNING, WALLACE, and FARRIS, Circuit Judges.

Pursuant to Federal Rule of Appellate Procedure 38, notice is hereby given, and Weiss has twenty-eight (28) days to explain in writing why he should not be sanctioned for filing a frivolous appeal.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE RE DEFAULT JUDGMENT

This Report and Recommendation is submitted to the Honorable Edward Rafeedie, United States District Judge, pursuant to the provisions of Title 28 U.S.C. S 636(b)(1)(B).

Plaintiff's application for default judgment against the defendant Moreno Valley Unified School District (District) has been referred to the undersigned for hearing and recommendation. Default was entered as to the District on March 21, 1994. Defendant opposes the application on the ground that the service of the summons and complaint was defective in that the summons did not bear the Clerk's

signature, seal, or any other indicia of its having been issued, but nor did the complaint bear any file stamp, case number, or other indicia of its having been filed. See F.R.Civ.P. 4(a)-(c). Plaintiff contends that the documents served were in all respects in proper order and in conformity with the rules of court. As each side supported its contentions with sworn declarations, an evidentiary hearing was ordered.

The evidentiary hearing was held on June 10 and 13, 1994. Michael Weiss appeared for plaintiff and Judith Anderson for defendants. Plaintiff offered the testimony of the process server, Edna Earle Hoffman, an employee of Foothill Legal Services (FLS), and Diane Hernandez, the office manager of FLS who assembled the materials for

service. Defendant offered the testimony of Robert C. Lee, the secretary of the District's Board of Education (and Superintendent of Schools), who received the documents from Ms. Hoffman, and Framroze Virjee, an attorney for the District to whom the documents were referred for examination immediately following their having been handed to Mr. Lee.

Ms. Hernandez testified that FLS had been engaged to perform a "rush" service on the District at or immediately preceding a meeting of the School Board to be held the evening of March 1, 1994. The assignment had come to FLS from Kern Attorney Services (Kern), which, it appears, had been engaged by counsel for plaintiff to arrange for the filing of the complaint, the issuance of the

summons, and the service of the summons and complaint. Kern advised FLS of the assignment early in the day on March 1, and provided FLS with an unfiled copy of the complaint and an unexecuted copy of a summons. Late in the day, according to Ms. Hernandez, Kern faxed a copy of a duly issued summons and a duly filed complaint (without exhibits) to FLS. She testified that she then substituted the faxed copies of the summons and face page of the complaint for those in the set of documents previously received from Kern. The summons and complaint were stapled together and, with a cover sheet containing instructions for the process server, placed on the table reserved for rush orders. Ms. Hoffman testified that she picked up the documents, which were stapled together, took them to the

designated place and handed them to Mr. Lee. Both Ms. Hoffman and Ms. Hernandez testified that the documents were not in an envelope, and that the packet prepared for and served on Mr. Lee was the same as the documents appearing in plaintiff's Exhibit 1.

Mr. Lee testified that just as the School Board meeting was to begin an elderly lady asked him his name and handed him a "typical brown mailing envelope" containing a quantity of loose documents (which are in evidence as defendants' Exhibit B). He opened the envelope and pulled out the documents far enough to see the caption and recognize them as legal documents. Mr. Virjee, whose firm had advised the District for a number of years, was present in the room for the meeting. Mr. Lee put the papers

back into the envelope and asked Mr. Virjee to step out of the room with him. He gave the papers to Mr. Virjee and asked him to examine them and be prepared to discuss them later during the closed session of the Board meeting.

Mr. Virjee testified that he had observed Mr. Lee and Ms. Hoffman together and received from Mr. Lee the envelope containing the loose papers (which he identified as being those in defendant's Exhibit B). He immediately noted the absence of any indication that the complaint had been filed or the summons signed or sealed by the Clerk's office.

Later that evening he advised the Board that there had either been an ineffective attempt at service of process, or that a delivery of a courtesy copy may have been intended. On the

basis of that and other advice of counsel, the District did not file an answer.

For the reasons summarized below (and set forth at greater length on the record at the conclusion of the hearing) I conclude that there was no effective service of the summons and complaint on the defendant District and will recommend that the application for default judgment be denied.

DISCUSSION

It is undisputed that the plaintiff bears the burden of establishing by a preponderance of the evidence that an effective service of a summons and complaint in conformity with Rule 4 of the Federal Rules of Civil Procedure occurred on March 1, 1994. Plaintiff has not met that burden. The testimony is in

direct conflict, but I find that of Mr. Lee and Mr. virjee to be more persuasive and more probable. Each has unequivocally identified defendant's Exhibit B as the packet of loose papers served upon Mr. Lee in a brown envelope just prior to the meeting of the School Board. Mr. virjee, an attorney experienced in practice in the federal courts, received and examined the documents within moments of their service upon Mr. Lee, perceived their obvious facial deficiency for purposes of effective service of process, and so advised the District's Board that same evening.

Plaintiff urges that the papers served were in proper order and that Mr. Lee and Mr. Virjee must be perjuring themselves. There is, however, no

evidence to support such a serious charge. It is implausible in the extreme that experienced and responsible persons such as Mr. Lee and Mr. Virjee, or any other rational person, would stoop to such measures with regard to a matter that could be so easily remedied. It is beyond comprehension what either of them would have to gain by fabricating a set of false documents and lying about the circumstances of the service, when a subsequent, curative service could so readily be effected. To accept plaintiff's premise would require me to assume that Mr. Lee and Mr. Virjee consciously pursued an essentially futile and unproductive course; one which could expose them, and the District, to very severe consequences should their conduct be exposed. I decline to do that.

This conclusion does not imply that either Ms. Hoffman or Ms. Hernandez knowingly gave false testimony. I do not doubt that each believes that the papers were properly assembled and delivered in accordance with the ordinary procedures of the office. However, that turns out not to be the case, according to the testimony of Mr. Lee and Mr. Virjee.

It is unnecessary to speculate about what became of the packet of papers that Ms. Hernandez described. The assignment from Kern was a rather complicated transaction and had to be performed under severe time constraints. Even under ordinary circumstances, opportunities for mistakes always exist in busy offices. That such a mistake was made appears to be the more plausible and probable explanation here. In this regard, I think

it significant that Mr. Lee's and Mr. Virjee's testimony involved their identification of the single set of documents which they physically received, whereas Ms. Hoffman and Ms. Hernandez, in reconstructing the events of March 1, 1994, were confronted with the necessarily difficult task of recalling the precise contents of one of the many, many sets of documents that the office received, processed and served that day. The opportunity for innocent error in recollection is, in such circumstances, very great.

I therefore accept the testimony of Mr. Lee and Mr. Virjee, and conclude that the delivery to Mr. Lee of the unsigned and unsealed summons and the unfiled complaint in the above action did not constitute effective service of the

summons and complaint within the meaning of Rule 4, Fed.R.Civ.P. The application for default judgment must therefore be DENIED. FN1

FN1. Defendant correctly points out (Opposition p.4) that a finding of effective service would not have settled the question, as the entry of default judgment is ultimately a discretionary matter. See, Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986), which enumerates the seven factors to be taken into account. However, in light of the above disposition, no useful purpose would be served in discussing the applicability of those factors to the instant case.

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Court issue an order; (1) approving

and adopting this Report and Recommendation; and, (2) denying the plaintiff's application for default Judgment. FN2

DATED: This 17 day of June, 1994.

United States Magistrate Judge

_____/s/_____

R.J. GROH JR.

United States Magistrate Judge

FN2. Reports and Recommendations are not appealable to the Court of Appeals, but are subject to the right of any party to file objections with the above-named District Judge within 10 days (20 days, if in custody and unrepresented), as provided in Rule 3.1.04 and .05 of the Local Rules Governing Duties of Magistrate Judges and Fed.R.Civ.P. 72. The failure of either party to object to a particular finding of fact or

conclusion of law may constitute a waiver of the right to contest the matter on appeal. Smith v. Frank, 923 F.2d 139, 141 (9th Cir. 1991); Martinez v. Ylst, 951 F.2d 1153, 1156 (9th Cir. 1991). A notice of appeal pursuant to the Federal Rules of Appellate Procedure should not be filed until Judgment has been entered. Please note that the rules do not contemplate the filing of declarations, documents or other new factual material in support of objections, and the the District Judge may decline to consider any such new matter.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 94-1317-ER(JGx)

Date: July 11, 1994

Title: Edward Gilliam -v- Moreno Valley Union High School District, et al.

CORRECTED MINUTES

PRESENT:

THE HONORABLE EDWARD RAFEEDIE

Judy Matthews, cOURTROOM cLERK

Mary Tucker, Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

None Present

ATTORNEYS PRESENT FOR DEFENDANTS:

None Present

IN CHAMBERS PROCEEDINGS: Motion defendant Valley Unified School District for sanctions pursuant to Federal Rule of Civil Procedure 11 and 28 USC 1927

IT IS HEREBY ORDERED that the minute order of July 11, 1994 is vacated to read as follows:

The court having read and considered all pleadings submitted and having heard statement of counsel, Michael Alan Weiss, prior counsel for plaintiff, is ordered to pay sanctions in the amount of $4,062.35 FORTHWITH. IT IS FURTHER ORDERED that sanctions in the amount of $5,000.00 for unnecessary work shall be paid to the Clerk of the Court.

IT IS FURTHER ORDERED that this matter is referred to the State Bar of California. The Court shall issue order.

cc: Counsel of Record

Fiscal Unit

MINUTES FORM 11 Initials of Deputy Clerk _____

(no initials present)

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

HONORABLE EDWARD RAFEEDIE, JUDGE

PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

MONDAY, JULY 11, 1994

MARY TUCKER,

CSR 9308 OFFICIAL COURT REPORTER

429-D U.S COURTHOUSE

312 NORTH SPRING STREET LOS ANGELES,

CALIF. 90012

213/687-0530

APPEARANCES:

FOR THE PLAINTIFF:

ARNOLD SIEGEL

GRONEMEIER & BARKER

301 N. LAKE AVENUE

SUITE 800

PASADENA, CALIFORNIA 91101

FOR THE DEFENDANT:

GREGORY WILLE

LIEBMAN, REINER & MCNEIL

1851 E. FIRST STREET

SUITE 1200

SANTA ANA, CALIFORNIA 92705

LOS ANGELES, CALIFORNIA; MONDAY, JULY 11, 1994

(10:00 A.M.)

THE CLERK: CIVIL 94-1317, EDWARD GILLIAM V. MORENO VALLEY UNION HIGH SCHOOL DISTRICT. COUNSEL, PLEASE STATE YOUR NAMES FOR THE RECORD, PLEASE.

MR. SIEGEL: GOOD MORNING, YOUR HONOR. ARNOLD SIEGEL OF GRONEMEIER & BARKER ON BEHALF OF PLAINTIFF EDWARD GILLIAM.

MR. WILLE: GOOD MORNING, YOUR HONOR. GREGORY WILLE OF LIEBMAN, REINER & MCNEIL APPEARING ON BEHALF OF MORENO VALLEY UNIDENTIFIED SCHOOL DISTRICT.

THE COURT: WHERE IS THE ATTORNEY AGAINST WHOM THE SANCTIONS ARE REQUESTED?

MR. SIEGEL: YOUR HONOR, OUR FIRM SUBSTITUTED IN FOR THIS CASE AFTER THIS MOTION WAS FILED. WHEN I RECEIVED THE REPLY MEMORANDUM FROM MR. WILLE'S OFFICE, I CALLED MR. WEISS TO DETERMINE WHETHER HE PLANNED TO APPEAR HERE THIS MORNING. HE TOLD ME -- THIS WAS ON EITHER TUESDAY OR WEDNESDAY LAST WEEK -- HE TOLD ME THAT HE IS IN ICELAND ON VACATION AND HAD WAS NOT PLANNING TO APPEAR THIS MORNING. THE COURT: WELL, THAT'S WHERE HE SHOULD PRACTICE LAW, BECAUSE FROM WHAT WE HAVE SEEN OF THIS LAWYER, NOT ONLY IN THIS CASE BUT IN ANOTHER CASE, HE APPEARS TO BE TOTALLY INEPT. WHAT WE HAVE BEFORE THE COURT IS THE MORENO VALLEY SCHOOL DISTRICT SEEKING SANCTIONS AGAINST THE PLAINTIFF'S ATTORNEY FOR HIS CONDUCT IN

THE SERVICE OF THE COMPLAINT. THE COURT HAS READ AND CONSIDERED ALL OF THE PAPERS SUBMITTED IN THIS MATTER, AND TENTATIVELY CONCLUDES AS FOLLOWS: IT IS CLEAR FROM THIS RECORD THAT IN HIS APPLICATION FOR DEFAULT JUDGMENT, ATTORNEY WEISS DID NOT ADVISE THE COURT OF ONGOING DISCUSSIONS BETWEEN HIMSELF AND THE LAW FIRM REPRESENTING THE DISTRICT AGAINST WHOM HE SOUGHT THIS DEFAULT. THIS, IN VIEW OF THE COURT, IS REPREHENSIBLE AND NON-ETHICAL CONDUCT SINCE MR. WEISS KNEW THAT THE DISTRICT WAS INVOLVED IN THE CASE AND WAS MERELY UNSURE ABOUT THE STATUS OF THE SERVICE OF THE SUMMONS AND COMPLAINT. FOR HIM TO RUN TO THE COURTHOUSE AND SEEK AN ENTRY OF DEFAULT UNDER THOSE CIRCUMSTANCES IS UNCONSCIONABLE. EVEN IF HE HAD A GOOD FAITH BELIEF THAT THE DISTRICT WAS NOT REPRESENTED BY LIEBMAN,

REINER, HE STILL HAD A DUTY TO NOTIFY THE COURT OF THIS SITUATION WHEN HE SOUGHT DEFAULT JUDGMENT. HOWEVER, MR. WEISS HAS NOT EVEN OFFERED THE COURT AN EXPLANATION FOR HIS CONDUCT. HE HAS NOT FILED ANY RESPONSE. AND NOW HE TELLS THE COURT, THROUGH YOU, THAT HE IS VACATIONING IN ICELAND. NOR HAS HE PROVIDED ANY EVIDENCE BACKING UP HIS ASSERTIONS ABOUT THINKING THAT O'MELVENY AND MYERS REPRESENTED THE SCHOOL DISTRICT. THIS LEADS THE COURT TO THE CONCLUSION THAT MR. WEISS' MISCONDUCT WAS WILLFUL AND IN BAD FAITH. THE COURT FINDS THAT MR. WEISS HAS VIOLATED 28 USC 1927, AS WELL AS RULE 11 OF THE FEDERAL RULES OF PROCEDURES. ACCORDINGLY, THE COURT ORDERS COUNSEL, MR. WEISS, TO PAY THE DEFENDANT'S COSTS FOR BRINGING THIS MOTION AND FOR OPPOSING THE APPLICATION

FOR DEFAULT JUDGMENT IN THE AMOUNT OF $4,062.25, WHICH IS ORDERED PAYABLE FORTHWITH TO COUNSEL FOR THE SCHOOL DISTRICT. IN ADDITION, THE COURT IMPOSES A FURTHER SANCTION WEISS FOR THE UNNECESSARY WORK THAT HE HAS CREATED INEPTITUDE, BY HIS MISCONDUCT AND BAD FAITH IN THIS AND THAT IS A SANCTION OF $5,000 OF WHICH IS ORDERED TO THE CLERK OF THIS COURT. THE COURT IS GOING TO REFER THIS MATTER TO THE STATE BAR OF CALIFORNIA FOR THE POSSIBILITY OF FURTHER DISCIPLINE ON THIS LAWYER. WE HAVE HAD THIS LAWYER HERE ON TWO OCCASIONS, AND OCCASION HIS CONDUCT WAS HIGHLY QUESTIONABLE. IS THERE ANYTHING FURTHER? THE COURT WILL PREPARE AN ORDER.

MR. SIEGEL: YOUR HONOR, ONLY ONE POINT. IN REGARD TO MR. WEISS NOT FILING AN OPPOSITION, WE GOT A CALL ON MR. WEISS

NOT FILING AN OPPOSITION, WE GOT A CALL FROM YOUR CLERK LAST WEEK ASKING US WHETHER THERE WAS OPPOSITION. AND IN THE DOCUMENTS THAT MR. WEISS HAD GIVEN TO OUR OFFICE WHEN WE SUBSTITUTED IN, THERE WAS OPPOSITION, THOUGH IT DOESN'T HAVE A COURT STAMP, A CONFORM COPY STAMP ON IT, AND I DID FAX THAT OPPOSITION -- OR I HAD MY SECRETARY FAX THAT OPPOSITION TO YOUR HONOR LAST WEEK. SO I'M NOT SURE THAT IT WAS ACTUALLY FILED WHEN IT WAS SUPPOSED TO HAVE BEEN FILED BUT --

THE COURT: IT WASN'T FILED TIMELY AND WE HAVEN'T SEEN IT.

MR. WILLE: YOUR HONOR, IF I MAY BE OF SOME ASSISTANCE. WE PREPARED THIS MOTION AND SERVED IT ON COUNSEL PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 11.

THE COURT: YES. I SEE WHAT IT IS THAT YOU ARE REFERRING TO. WE DID RECEIVE THAT.

BUT IT DOESN'T SAY ANYTHING. IT DOESN'T EXPLAIN THE BEHAVIOR ABOUT WHICH THE COURT IS CONCERNED AND HAS DISCUSSED HERE. THIS IS A NOTHING OPPOSITION. FIRST, IT WASN'T FILED BY HIM IN THE PROPER TIME. IT WASN'T FILED BY HIM. AND IT IS TYPICAL OF WHAT WE HAVE SEEN OF HIM. IT ADDS NOTHING TO THIS CASE. IT DOES NOT JUSTIFY WHAT HE DID. AND I DON'T DEEM IT TO BE AN OPPOSITION AT ALL.

MR. SIEGEL: WELL, I HAVE NO COMMENTS ON THE SUBSTANCE OF IT, YOUR HONOR. I JUST WANTED TO MAKE SURE IT HAD GOTTEN THERE. THANK YOU.

MR. WILLE: I HAVE A CONCERN ABOUT THE TIMING OF THE FILING OF THE OPPOSITION. IF I UNDERSTAND THE COURT CORRECTLY, I THINK THE COURT IS UNDER THE IMPRESSION THAT THE OPPOSITION WAS LATE FILED.

THE COURT: WASN'T FILED AT ALL BY HIM.

WE GOT IT A FAX SENT BY THIS COUNSEL.

MR. WILLE: YOUR HONOR, WE SERVED THE MOTION AND HELD IT FOR 21 DAYS, PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE. DURING THAT HOLDING PERIOD, WE WERE CONTACTED--WE RECEIVED A COPY OF THE OPPOSITION, AND I BELIEVE WE WERE CONTACTED BY THE CLERK OF THE COURT - - WE WERE CERTAINLY AT SOME POINT -- TO ASK IF WE INTENDED TO FILE A MOTION INASMUCH AS THE COURT HAD ALREADY RECEIVED THE OPPOSITION.

THE COURT: I DON'T UNDERSTAND WHAT YOU ARE ABOUT, COUNSEL. WHAT IS THE POINT OF WHAT YOU ARE SAYING IN LIGHT I HAVE SAID ABOUT THIS PURPORTED OPPOSITION?

MR. WILLE: SIMPLY, YOUR HONOR, I DID NOT WANT TO LEAVE THE COURT WITH THE IMPRESSION THAT MR. WEISS HAD FILED HIS OPPOSITION LATE. I DO NOT KNOW IF IT WAS

NOT ACCEPTED BY THE COURT. HOWEVER, DURING THE 21-DAY HOLDING PERIOD, WITH RESPECT TO FEDERAL RULE OF CIVIL PROCEDURE 11, I BELIEVE WE RECEIVED THE OPPOSITION.

THE COURT: WHO IS "WE"?

MR. WILLE: "WE" IS COUNSEL FOR MORENO VALLEY UNIFIED SCHOOL DISTRICT.

THE COURT: MAYBE YOU WANT ME TO CANCEL THIS SANCTION. IS THAT WHAT YOU ARE SAYING?

MR. WILLE: NO, YOUR HONOR.

THE COURT: WHAT IS THE POINT OF YOUR DISCUSSION HERE?

MR. WILLE: YOUR HONOR, I DID NOT WANT THERE TO BE ANY QUESTION ABOUT THE COURT HAVING BEEN MISINFORMED ABOUT THE FACTS.

THE COURT: THIS OPPOSITION BEARS A STAMP OF JUNE 10TH. SO IT WAS FILED ON JUNE 10TH. (COURT CONFERS WITH CLERK)

THE COURT: MY CLERK ADVISES ME THAT THIS OPPOSITION TO MOTIONS FOR SANCTIONS WAS ACTUALLY FILED BEFORE THE MOTION FOR SANCTIONS.

MR. WILLE: YES, YOUR HONOR.

THE COURT: SO AT THAT POINT IN TIME IT'S USELESS. IT IS AN OPPOSITION TO NOTHING. WELL, IT IS TYPICAL OF THIS LAWYER'S BEHAVIOR. ALL RIGHT. THAT'S ALL, COUNSEL.

MR. WILLE: THANK YOU, YOUR HONOR.

MR. SIEGEL: THANK YOU, YOUR HONOR.

(PROCEEDINGS ADJOURNED.)

* * * * * *

I, MARY TUCKER, CSR, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS TRUE AND CORRECT.

MARY TUCKER, CSR DATE

USDC DOCKET SHEETS

CIVIL DOCKET FOR CASE #: 94-CV-1317

Gilliam v. Moreno Valley Union, et al

Filed: 03/01/94

Assigned to: Judge Edward Rafeedie

Jury demand: Defendant

Referred to: Discovery R. James Groh

Demand: $0,000

Nature of Suit: 442

Lead Docket: None

Jurisdiction: Federal Question

Dkt# in other court: None

Cause: 42:2000 Job Discrimination (Race)

EDWARD GILLIAM Michael Alan Weiss

plaintiff [term 06/29/94]

[COR LD NTC]

Michael A Weiss Law Offices

2049 Century Park, Suite 1100

Los Angeles, CA 90067

310-556-7996

Dale L Gronemeier

[COR LD NTC]

Arnold I Siegel

[COR LD NTC]

Gronemeier & Barker

P O Box 90670

301 North Lake Ave

Suite 800

Pasadena, CA 91101

818-568-4600

v.

MORENO VALLEY UNION HIGH

SCHOOL DISTRICT

defendant

[term 12/13/94]

MORENO VALLEY UNIFIED SCHOOL

J Michael Declues

DISTRICT BOARD OF EDUCATION [COR LD NTC]

MEMBERS

J Michael Declues

defendant [term 12/20/94]

(See above)

[COR LD NTC]

Walsh & Declues

P O Box 22021

1651 E Fourth St

Suite 150

Santa Ana, CA 92702-2021

714-647-1776

MORENO VALLEY PUBLISHING COMPANY

defendant

[term 08/24/94]

DOES, 1-20

defendant

FRANK WEST

Dana John McCune

defendant [COR LD NTC]

Lynberg & Watkins

888 South Figueroa Street

16th Floor

Los Angeles, CA 90017-2516

213-624-8700

KELLY GILLUM

Dana John McCune

defendant (See above)

[COR LD NTC]

TRACEY VACKAR

Dana John McCune

defendant [term 12/20/94]

(See above)

[COR LD NTC]

ROBERT C LEE

defendant

DONREY INC., which will

Karen N Frederiksen

transact business in the state

[COR LD NTC]

of CA under the name of Donrey

Davis Wright Tremaine

Media Group, a nevada corp.

1000 Wilshire Blvd

defendant Suite 600

Los Angeles, CA 90017

213-633-6800

BOARD OF EDUCATION OF THE

MORENO UNIFIED SCHOOL DISTRICT

defendant

3/1/94 1 COMPLAINT (Summons(es) issued) (referred to Discovery R. J. Groh) J/T Demanded (ca) [Entry date 3/03/94]

3/21/94 2 APPLICATION by plaintiff Edward Gilliam for ent of deflt; Decl of Cnsl (sb) [Entry date 03/29/94] [Edit date 03/29/94]

3/21/94 3 DEFAULT ENTERED as to defendant Moreno Unified High School District (cc: all counsel) (sb) [Entry

date 03/29/94] [Edit date 03/29/94]

4/18/94 4 MINUTES: Crt , on its own Mot, hereby ORDERS pltf(s) to show cause in writing not later than 4/28/94 why this actn should not be dism for lack of prosecution by Judge Edward Rafeedie CR:N/A (suz) [Entry date 04/20/94] [Edit date 04/25/94]

4/18/94 13 NOTICE: Purs tot the Judge's Directive, the following matter: application for default judgment lodged on 4/18/94 to be heard on when set by Mag Judge is referred to the Mag for all proceedings. (bp) [Entry date 06/06/94]

4/19/94 5 NOTICE of doc discrepancies, appl for dflt jgm; no P/S attached; the doc is not to be fld but instead rejected & returned to cnsl. (bp) [Entry date 04/25/94]

4/28/94 6 RESPONSE to OSC re lack

of prosecution by plaintiff Edward Gilliam to [4-1] (bp) [Entry date 05/02/94]

5/5/94 7 NOTICE Tht pursuant to the judges directive, the following matter of hearing setting hearing on application for default jgm [2-1] 5/23/94 (bp) [Entry date 05/06/94]

5/9/94 8 OBJECTIONS: Opposition to application for default judgment; decl's of Robert C. Lee, Framroze M. Virgee, J. Michael Declues & Judith D. Anderson by defendant Moreno Valley Union to [7-1] (bp) [Entry date 05/11/94]

5/9/94 9 MINUTES: ORD continuing hrng on default judgment setting hearing on hearing notice [7-1] 1:30 6/9/94 by Magistrate Judge Rupert J. Groh CR: none (bp) [Entry date 05/16/94]

5/13/94 10 EX PARTE APPLICATION by

plaintiff Edward Gilliam to identify 3 doe dft's ; motion hearing set for <date not set> (bp) [Entry date 05/17/94]

5/13/94 -- LODGED/PROPOSED Order (FWD TO CRD) (bp) [Entry date 05/17/94]

5/26/94 11 REPLY to objection re default judgment by plaintiff Edward Gilliam re [8-1] (bp) [Entry date 05/31/94]

5/31/94 12 NOTICE of doucment discrepancies decl in support of default jgmt. Lacking p/s the document is not to be fld but instead rejected & returned to cnsl. (bp) [Entry date 06/06/94]

6/1/94 14 EX PARTE APPLICATION by plaintiff Edward Gilliam to strike hrng dt & mot brief due to lack of understanding; motion hearing set for <date not set> (bp) [Entry date 06/06/94]

6/1/94 -- LODGED/PROPOSED Order

(FWD TO CRD) (bp) [Entry date 06/06/94]

6/3/94 15 OBJECTIONS to exparte appl to strike hrng dt & mot brief due to lack of understanding by defendant Moreno Valley Union to [14-1] (bp) [Entry date 06/07/94]

6/3/94 17 NOTICE of document discrepancies pla's ex parte appl to reset hrng dt; L.R. 7.18 lacking prop ord; the document is to be fld & processed. (bp) [Entry date 06/10/94]

6/3/94 18 EX PARTE APPLICATION by plaintiff Edward Gilliam to reset hrng dt on hrng to enter dflt jgm decl re ntc.; motion hearing set for <date not set> (bp) [Entry date 06/10/94]

6/7/94 16 ORDER tht Frank West, Kelly Gillum & Tracey Vackar are hereby so identified &made parties herein. by Judge Edward Rafeedie (bp) [Entry date

06/08/94]

6/7/94 19 DECLARATION in support of default jgm by plaintiff Edward Gilliam re [18-1] (bp) [Entrydate 06/10/94]

6/7/94 20 NOTICE OF WITHDRAWAL by plaintiff Edward Gilliam withdrawing motion to reset hrng dt on hrng to enter dflt jgm [18-1] (bp) [Entry date 06/10/94]

6/9/94 22 MINUTES: The crt ords further hrng on issue of P/S of S/C upon dft's to be cont'd to ; IN COURT HEARING RE: hrng on issue of P/S of S/C set on 9:00 6/13/94 The crt further directs cnsl to have their witneses present & ready to give testimony by Magistrate Judge Rupert J. Groh CR: none (bp) [Entry date 06/15/94]

6/10/94 21 OPPOSITION to motion for

sanctions by plaintiff Edward Gilliam (bp) [Entry date 06/14/94]

6/13/94 23 NOTICE by defendant Moreno Valley Union ofchange of firm name of the law firm of Liebman, Reiner, McMeil & Walsh has been changed to Liebman, Reiner, Nachison & Walsh. (bp) [Entry date 06/15/94]

6/13/94 24 EXHIBIT & Witness list (bp) [Entry date 06/16/94]

6/13/94 25 MINUTES: ; in court hearing held re P/S of S/C Hrng is renewed. Witnesses called, sworn & testify. Exhibits are marked & received into evidence (list of exhibits & witnesses fld herewith). Cnsl make closing arguments. Cnsl rest. denying application [2-1] by Magistrate Judge Rupert J. Groh CR: tapes 278,279 & 280 (bp) [Entry date 06/16/94]

6/17/94 26 REPORT AND RECOMMENDATION re deflt jgm of U.S. Discovery R. J. Groh (bg) [Entry date 06/20/94]

6/17/94 27 NOTICE OF FILING REPORT AND RECOMMENDATION and lodging of proposed judgment re: (cc: all counsel) (bg) [Entry date 06/20/94]

6/20/94 28 NOTICE OF MOTION AND MOTION by dft Moreno Valley Unified School District for sanctions purs to F.R.Civ.P. 11 & 28 U.S.C. Section 1927 ; motion hearing set for 10:00 7/11/94; memo of PA; decl of J. Michael DeClues. (gk) Entry date 06/25/94]

6/29/94 29 ATTORNEY SUBSTITUTION: terminating attorney Michael Alan Weiss for Edward Gilliam and substituting attorney Dale L Gronemeier, Arnold I Siegel by Judge Edward Rafeedie (bp)

[Entry date 06/30/94]

6/29/94 30 EX PARTE APPLICATION by plaintiff Edward Gilliam to extend the ti within which to srv summons & cmp; motion hearing set for <date not set> (bp) [Entry date 06/30/94]

6/29/94 -- LODGED/PROPOSED Order (FWD TO CRD) (bp) [Entry date 06/30/94]

6/30/94 31 ORDER Tht pla's operative summons & cmp must be served upon the dfts' in this action by 9/7/94. by Judge Edward Rafeedie granting motion to extend the ti within which to srv summons & cmp [30-1] (bp) [Entry date 07/05/94]

7/1/94 32 REPLY to opposition to mot for sanctions: declaration of J. Michael Declues by defendant Moreno Valley Union re [28-1] (bp) [Entry date 07/06/94]

7/11/94 33 ORDER by Judge Edward Rafeedie tht the report & recommendation of the U.S. Mag Judge be approved & adopted in this case. It is Fur ORD tht pla's application for default jgm is DENIED. [26-1] (ENT 7/12/94) mld cpys & ntc. (bp) [Entry date 07/12/94]

7/11/94 34 MINUTES: The crt having read & considered all pleadings submitted & having heard stmt of cnsl, Michael Alan Weiss, prior cnsl for pla, is ord to pay sanctions in the amount of $4,062.35 FORTHWITH. It is fur ORD tht sanctions in the amount of $500,000.00 for unnecessary work shall be paid to the clerk of the court. It is fur ORD tht this matter is referred to the state bar of CA. the court shall issue ord. granting motion for sanctions purs to F.R.Civ.P.11 & 28 U.S.C. Section 1927 [28-1] by Judge

Edward Rafeedie CR: Mary Tucker (bp) [Entry date 07/13/94]

7/11/94 37 MINUTES: It is ORD tht the M.O. of 7/11/94 is vacated to read as follows: The crt having read & considered all pleadings submitted & having heard stmt of cnsl, Michael Alan Weiss, prior cnsl for pla, is ord to pay sanctions in the amount of $4.062.35 forthwith. It is further ORD tht sanctions in the amount of $5,000.00 for unecessary work shall be paid to the clerk of the crt. It is furhter ORD tht this matter is referred to the state bar of Ca. The crt shall issue ord. by Judge Edward Rafeedie CR: Mary Tucker (bp) [Entry date 08/24/94]

8/4/94 35 NOTICE OF MOTION AND MOTION by plaintiff Edward Gilliam for reconsideration of sanctions ord upon prior counsel; decl of Michael Weiss;

motion hearing set for 10:00 8/29/94 (bp) [Entry date 08/05/94]

8/15/94 36 DECLARATION of J. Michael Declues in opposition to prior counsel's motion for reconsideration of sanctions by defendant Moreno Valley Union re [35-1] (bp) [Entry date 08/17/94]

08/22/94 39 MINUTES: taking under advisement on the motion for reconsideration of sanctions [35-1] the motion is taken off cal for decision w/o oral argument. No appearance is required by cnsl by Judge Edward Rafeedie CR: Mary Tucker (bp) [Entry date 08/26/94]

8/24/94 38 FIRST AMENDED COMPLAINT [1-1] by plaintiff Edward Gilliam terminating defendant Moreno Valley Pblsh; adding Robert C Lee, Donrey Inc.; jury demand; summons issued (bp) [Entry

date 08/25/94]

8/29/94 40 MEMORANDUM of P/A by plaintiff Edward Gilliam in support of motion for reconsideration of sanctions [35-1] (es) [Entry date 09/07/94]

8/31/94 41 MINUTES: denying motion for reconsideration of sanctions [35-1] by Judge Edward Rafeedie CR: Mary Tucker (lm) [Entry date 09/09/94]

9/6/94 42 NOTICE OF APPEAL by Michael Weiss plaintiff Edward Gilliam prior counsel to 9th C/A from Dist. Court minute ord fld 8/31/94. (cc: Law Office of Michael Weiss.) Fee: Paid. (dl)

OPPOSITION TO MOTION FOR SANCTIONS

Date: July 11, 1994

Time: 10:00 am

Room: 1

COMES NOW plaintiff to oppose defendants motion for sanctions on the ground that defendant had no standing to complain of same and upon the ground of fraud and misrepresentation.

1. "An attorney in his capacity merely as such, has no power to make any agreement for his client before a suit has been commenced or before he has been retained to commence one. If before the commencement of any suit an attorney assumes to act for his principal it must be as agent and his actual authority must appear, and if it be..."

MOTION FOR SANCTIONS

DECLARATION OF J. MICHAEL DECLUES

21. As managing partner, and the attorney charged with the defence of DISTRICT in this case, I have reviewed the billings to be submitted for payment for this firms services in defense of this case. The billings which I reviewed were prepared by persons with knowledge of the services performed and who were under a business duty to prepare the billings. The billings are prepared at or near the time the services are rendered. Based upon my review of the billings I know that this firm has or will bill as follows for the activities required to oppose the Application for Entry of Default Judgment:

Activity	Time	Rate	Extension
Legal research regarding			

ability to oppose Application
for Default Judgment.

1 hour $110 per hr. $110.00
Legal research regarding
grounds for opposition to
Application for Default
Judgement.

4.25 hours 110 per hr. 467.50
Preparation of Opposition
to Application for Entry
of Default Judgment.

4.75 hours 110 per hr. 522.50
Preparation of Declaration
of J. Michael Declues

.75 hours 115 per hr. 86.25
Preparation of Declaration
of Judith D. Anderson

.8 hours 115 per hr. 92.00
Anticipated time to prepare
for oral argument on

Application for Entry of
Default Judgment.

.75 hours 135 per hr. 101.25

Anticipated travel time
to and from the court and
anticipated appearance time
on the Application for
Entry of Default Judgement.

4.00 hours 135 per hr. 540.00

Legal research regarding
sanctions pursuant to FRCP 11

4.5 hours 110 per hr. 495.00

Legal research regarding
sanctions pursuant to
28 U.S.C. 1927

2.0 hours 110 per hr. 220.00

Preparation of Motion
for Sanctions

.4 hours 110 per hr. 44.00

Preparation of Memorandum

of Points and Authorities

5.75 hours 110 per hr. 632.50

Preparation of Declaration
of J, Michael Declues

1.0 hours 110 per hr. 110.00

Anticipated time to prepare
for oral argument on Motion
for Sanctions

.75 hours 135 per hr. 101.25

Anticipated travel time
to and from the court and
anticipated appearance time on the
Motion for Sanctions

4.00 hours 135 per hour. 540

TOTAL

$4,062.25

Of course, this figure does not allow for the preparation of the declaration of Framroze M. Virjee, or the declaration of Robert C. Lee which

declarations were prepared in support to the Opposition to the Application for Entry of Default Judgment, and which were not prepared by this firm.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed this 24th day of May, 1994 at Santa Ana, California.

_____/s/_____

J. MICHAEL DECLUES, Declarant

United States District Court

Central District of California

Case Number CV_____

Edward Gilliam,)

Plaintiff) SUMMONS

v.)

Moreno Valley Unified)

High School District;)

Moreno Valley Union High)

School District Board of Education)

Members; Moreno Valley Publishing)

Company; Does 1 through 20)

Inclusive)

Defendants)

_____)

To the above-named Defendant:

You are hereby summoned and required to serve upon

Michael Weiss,

plaintiff's attorney, whose address is

2049 Century Park East #1100, Los Angeles, CA 90067

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

DATE:_____

CLERK, U.S. DISTRICT COURT

By_____,

Deputy Clerk

[Seal of the U.S. District Court]

CONFORM

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Case No.

COMPLAINT AGAINST RACIAL DISCRIMINATION IN EMPLOYMENT; PENDENTE CLAIMS

JURY TRIAL DEMANDED

FIRST CAUSE OF ACTION-42 USC 1983

AGAINST DISTRICT & ITS BOARD OF EDUCATION

1. The Court has subject matter jurisdiction of this action under 28 USC 1331 and 1343 for violation of 42 USC 1983 in regards to the Equal Protection Clause of the Fourteenth Amendment, the First Amendment, the FIrst Amendment Free Speech/Press Clauses, 42 USC 1981, and s 706 of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000e-5).

2. Defendants Moreno Valley Union High School District Board of Education members Tracey Vackar, Frank West, and Kelly Gillum, are sued in their individual capacities only under this cause of action seeking monetary damages and injunctive relief to keep libel and discriminatory newspapers off campus, among other things. The District is sued in the alternative because through its policy, custom, usage or ratification, plaintiffs rights under the Constitutional, statutory and decisional law was violated.

3. Does 1-20 are sued herein upon information and belief that they are somehow liable for the wrongdoing alleged herein but plaintiff is unaware of their roles and identities and this Complaint will be accordingly amended when the same

is ascertained.

4. Plaintiff is the principal of Canyon Springs High School, one of many schools comprising defendant Moreno Valley Union High School District, and was injured in the County of Los Angeles due to the below mentioned acts and omissions.

5. From the beginning of his employment around August 1993, plaintiff complained of racial discrimination orally and in writing, but the Board of Education members failed and refused to take immediate and appropriate action, and let the problem grow out of hand. Exhibit "1" are illustrative of plaintiffs complaints. When plaintiff proposed pupil expulsions, the superintendent (secretary of the Board) told him to hold off.

6. The Moreno Valley Board of Education members, in acting under color of

California law, ordinance, regulation, or alternatively pursuant to a policy, custom or usage of the Board, failed to train itself, as well as the Districts administrators, teachers, employees and students about racial discrimination and free speech/press. They did this with conscious indifference to plaintiffs clearly established Constitutional rights under the First Amendment (See Exhibits "3" and "4") as well as the Fourteenth Amendment Equal Protection Clause and his statutory rights under 42 USC 1981 and Title VII to be free from racial discrimination and free speech/press abuses. They knew themselves as well as their superintendent, administrators, agents, employees and students were already in a racially discriminatory environment and

that student newspapers ware printing libel, yet their training and re-training programs on these topics vera woefully inadequate.

7. The same is complained of concerning the Moreno Valley Board of Education members investigation of, supervision over, and discipline after, racially discriminatory and libelous events within the District by persons it has control or jurisdiction over.

8. The District's Board of Education members are the final decision makers concerning complaints of racial discrimination within the District regarding persons it has control or jurisdiction over.

9. Plaintiff pressed hard to stop the discrimination, hate crimes, and libel on the campus; but being a Black man in

authority his discipline was not accepted. Instead he is undergoing a form of discrimination and reverse discrimination himself to the point where his own job is in jeopardy. The Districts Affirmative Action Plan as well as their Board Rules, as applied, violate the Equal Protection Clause. Plaintiff has no adequate remedy at law and will suffer immediate and irreparable injury unless injunctive relief is awarded him prohibiting racial discrimination and libel in the future.

10. As an actual and proximate cause and result of the above mentioned acts and omissions, plaintiffs Federal constitutional and statutory rights have been violated and he has sustained damages to his personal and property interests in an amount to be proven at

time of trial herein.

2ND CAUSE OF ACTION-TITLE VII

AGAINST MORENO VALLEY UNIFIED SCHOOL DISTRICT

11. Jurisdiction is vested in this Court under 28 USC 1343 to redress violation of Title VII of the 1964 Civil Rights Act.

12. Paragraphs 4 through 10 are incorporated herein by reference.

13. The plaintiff filed timely charges with the Equal Employment Opportunity Commission and Department of Fair Housing and Employment; copies of which are identified herein as Exhibit "2" and made a part hereof by reference.

14. The Moreno Valley Union High School District is an employer within the meaning of s 701(b) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e(b), and the California

Government Code.

15. Plaintiff alleges that defendants' practices as described in his E.E.O.C. and D.F.E.H. Complaints and as further described herein discriminated against him because of race - Black.

16. Defendant discriminated against plaintiff with respect to the performance of his employment contract as well as the privileges, conditions, and terms of employment; and/or limited, segregated or classified its employees and applicants for employment in ways which deprived or tended to deprive plaintiff of employment opportunities and otherwise adversely affected his status as an employee because of his race.

17. Defendant created, maintained, and/or ratified a hostile and abusive working environment for plaintiff colored by

discriminatory harassment, through a series of continuing violations.

18. The defendants Board of Education, superintendent, agents and/or employees who perpetrated this discrimination were all working within the course and scope of their official duties when they committed the wrongful acts alleged herein; and, did the same with the full knowledge, direction or ratification of said Board.

19. Said Board of Education, superintendent, agents and/or employees manifested conscious indifference or even a specific intent to discriminate against plaintiff because of race. This failure was due to its defective training, supervision and discipline.

20. Moreno Valley Unified School District failed to take immediate and appropriate

action to identify and quash racial discrimination on its campuses and in particular Canyon Springs High School, all of which damaged plaintiff.

THIRD CAUSE OF ACTION NEGLIGENCE AND LIBEL AGAINST MORENO VALLEY UNIFIED SCHOOL DISTRICT

21. Subject matter jurisdiction of this supplemental claim is vested in this Court under 28 USC 1367.

22. Paragraphs 3, 4, 5, 6, 7, 9, 10 and 20 are incorporated herein by reference.

23. Based upon information and belief Moreno Valley Unified School District libeled plaintiff, and illustrative copies of the libel are attached hereto as Exhibits "3" and "4".

24. Although the student underground newspaper "Common Sense" was not officially recognized by the defendant,

Moreno Valley Unified School District resources (or class time) were used to publish, re-publish and disseminate it. Nor was the public newspaper, The Valley Times; however both newspapers were re-published orally or in writing on the campus.

25. Moreno Valley Union High School District had a duty under various statutes, including Civil Code 1714 to manage its person and property in a reasonable manner, which it failed to do.

26. Moreno Valley Union High School District initially and subsequently failed to prevent plaintiff from being libeled and relibeled in the student and public newspapers by its own staff, students, employees, agents etc.

27. This libel injured, and continues to injure, plaintiff in the performance of

the duties of his office.

FOURTH CAUSE OF ACTION - DISCRIMINATION/LIBEL AGAINST MORENO VALLEY PUBLISHING COMPANY

28. Jurisdiction is vested in this court under 28 USC 1331, 1343, and 1367 for violations of 42 USC 1981, abuse of the United States Constitution First Amendment Freedom of Press, and California law regarding libel.

29. Paragraphs 3, 4, 5. 9, 10, 17; "as applied to Moreno Valley Publishing Company" paragraphs 19, 20, 25, 27; and, finally paragraph 27 are all incorporated by reference herein.

30. Moreno Valley Publishing Company abused its United States Constitution First Amendment Freedom of Press and libeled plaintiff. Illustrative copies of the same are attached hereto as

Exhibit"4".

30. This defendant launched on a campaign of harassment and discrimination against plaintiff in order to either discredit him and either get him fired, or cause racial discrimination, violence or worse between the District, its Board of Education members, teachers, students, parents and/or community members.

31. The libel defendant printed was racially discriminatory, and violated 42 USC 1981 and Government Code 12940.

32. Moreno Valley Publishing Company re-published and disseminated statements that others made which ware libelous/slanderous and is responsible for such republication.

33. Plaintiff gave notice to defendant specifying the libelous statements on February 28, 1994 and demanded the same

be corrected. Defendant failed to correct same.

34. WHEREFORE plaintiff demand relief by way of judgment as follows:

(a) For equitable and compensatory relief under the appropriate statutory provisions of 42 USC 1981, 1983, Title VII, the Civil Rights Act of 1991, the Government Code, the Civil Code, or other source not inconsistent with the Eleventh Amendment.

(b) For costs of suit including reasonable/enhanced attorney fees and expert witness fees under 42 USC 1933, the Civil Rights Act of 1981, the Government Code, the Civil Code, or other source.

(c) For compensatory and punitive damages for libel.

(d) For relief which will make plaintiff

whole.

(e) For other relief as is deemed necessary and proper.

Date: February 28, 1994

LAW OFFICE OF MICHAEL WEISS

By:____/s/_____

Michael Weiss, Attorney for Plaintiff

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, plaintiff hereby demand trial by jury.

Date: February 28, 1994

LAW OFFICE OF MICHAEL WEISS

By:____/s/_____

Michael Weiss, Attorney for Plaintiff

LIEBMAN, REINER, McNEIL & WALSH

ATTORNEYS AT LAW

March 21, 1994

VIA FACSIMILE AND U.S. MAIL

Mr. Michael Weiss

2049 Century Park East, Suite 1100

Los Angeles, CA 90067

RE: EDWARD GILLIAM v. MORENO VALLEY U.H.S.D.

Dear Mr. Weiss:

In regard to the above-captioned matter, this correspondence will serve to memorialize our telephone conversation of March 21, 1994.

I advised you this morning that our office was representing the Moreno Valley School District in this matter. It is my understanding that you provided a courtesy copy of the complaint to the Superintendent. That courtesy copy does

not represent actual service on him.

Firstly you advised me that you would not accept my oral representation to you that our office was in fact representing the defendants in this matter.

You also indicated your belief that the Board of Education has been served and in fact advised me that it cost $160 to serve the Board of Education and that the members were served at a Board meeting. However, you refuse to provide any information to me regarding the date of service or any other details regarding service.

Therefore, I will be communicating with my clients in regard to determining whether service was in fact proper and on which date service was actually accomplished.

Sincerely,

LIEBMAN, REINER, McNEIL & WALSH

A Professional Corporation

_____/s/_____

JUDITH D. ANDERSON

MICHAEL WEISS

ATTORNEY AT LAW

2049 CENTURY PARK EAST, SUITE 1100

LOS ANGELES, CALIFORNIA 90067

TELEPHONE (310) 556-7996

Judith Anderson Esquire

3-21-94

I received your facsimile.

It is my understanding that O'Melveny & Myers represents Moreno Valley Unified School District, and you should call Framroze Virjee (213) 669-6000 concerning

same.

As you and I know it takes approval of the Board of Education to let out such contracts. Please provide such Board of Education written authority (backed up by a legitimate vote count.) Then I can be assured that you legitimately represent them.

Very Truly Yours,

_____/s/_____

Michael Weiss, Attorney for Ed Gilliam

LIEBMAN, REINER, McNEIL & WALSH

ATTORNEYS AT LAW

March 29, 1994

VIA FACSIMILE AND U.S. MAIL

Mr. Michael Weiss

2049 Century Park East, Suite 1100

Los Angeles, CA 90067

RE: EDWARD GILLIAM v. MORENO VALLEY U.H.S.D.

Dear Mr. Weiss:

This correspondence will serve to confirm our conversation of March 23, 1994 in my office wherein we advised you that the only copy of the complaint we are aware of is not a conformed copy as it lacks a filing stamp and further, it does not indicate that a summons was issued or that it was ever served. During our conversation you agreed to check with your process server and get back to us as soon as possible to apprise us of the status of service. As of the present date, we have not heard from you and it appears to us that no service has been accomplished.

Sincerely,

LIEBMAN, REINER, McNEIL & WALSH

A Professional Corporation

_____/s/_____

J. MICHAEL DECLUES

JMD:sc

cc: KEENAN & ASSOC./Lynette Richards

MORENO VALLEY U.S.D./Robert C. Lee,

Superintendent

MICHAEL WEISS

ATTORNEY AT LAW

2049 CENTURY PARK EAST, SUITE 1100

LOS ANGELES, CALIFORNIA 90067

(310) 5567996

Liebman, Reiner, McNeil

1851 E. 1st St. #1200

Santa Ana, CA 90705

Attn: Michael Declues

March 29, 1994

RE: Gilliam v. Moreno

Dear Mr Declues,

I am engaged in a 1 week long Federal Court jury trial about L.A.U.S.D. racial discrimination this week. One juror had vomiting spell today and the court sent everybody home, and to return tomorrow morning.

My attorney service says the Summons and Complaint had a case number and seal on them, that they kept a copy of the face page of all documents they serve on anyone as a matter of business practice and that they would forward same to me. They also stated they would directly speak to the process server.

Therefore I must await their reply for a

little while longer.

Very Truly Yours,

_____/s/_____

Michael Weiss, Attorney for Ed Gilliam

MICHAEL WEISS

ATTORNEY AT LAW

2049 CENTURY PARK EAST, SUITE 1100

LOS ANGELES, CALIFORNIA 90067

TELEPHONE (310) 556-7996

LIEBMAN, REINER,McNEIL & WALSH

Attn: Michael Declues

April 8, 1994

Re: Gilliam v. Moreno Valley School District

Dear Mr Declues,

I hearsay that Robert Lee may have improperly removed a tape recording of a

closed session of the Board of Education concerning the Gilliam termination.

As far as the service of complaint issue, enclosed is my attorney service response. I believe there is corruption concerning your client on the service issue and request you query Robert Lee about same.

Very Truly Yours,

_____/s/_____

Michael Weiss, Attorney

for Gilliam

KERN

ATTORNEY SERVICE, INC.

Michael Weiss

2049 Century Park East, Suite 1100

Los Angeles, Ca 90067

Dear Mr. Weiss

April 1, 1994

Invoice #259837 The process server was not told the new address to serve by the people at the given address. The server had to do some research in order to find the correct address for service. This than makes the $25 fee earned.

Invoice #259834 Due to my servers error we will deduct the $100 fee for service along the $120 fee for filing a new complaint.

Invoice #299036 Walk thru's are not covered under your monthly retainer. (This is in your brochure) Your case gilliam had to be specially walked thru in order for a server to serve the documents by the deadline that you gave us.

Invoice #259836 The $130 that you were quoted was strictly for the service only. The $30 fee was for the special time in

which the subject had to be served. Inclosed you will find a copy of the Summons and Complaint with the case number. Copies of these were attached on top of copies that were not conformed, and both were served to the subject. With the deduction we have given to you, your past due balance is $81 and your new bill is $606.10, which comes to a total of $687.10 which is due no later than April 10, 1994.

Sincerely

_____/s/_____

Sheri J. Kern

CONFORM

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CASE NO. 94-1317 ER (JGx)

COMPLAINT AGAINST RACIAL DISCRIMINATION IN EMPLOYMENT; PENDENTE CLAIMS

JURY TRIAL DEMANDED

FIRST CAUSE OF ACTION-42 USC 1983

AGAINST DISTRICT & ITS BOARD OF EDUCATION

1. The Court has subject matter jurisdiction of this action under 28 USC 1331 and 1343 for violation of 42 USC 1983 in regards to the Equal Protection Clause of the Fourteenth Amendment, the First Amendment, the FIrst Amendment Free Speech/Press Clauses, 42 USC 1981, and s

706 of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000e-5).

2. Defendants Moreno Valley Union High School District Board of Education members Tracey Vackar, Frank

United States District Court

Central District of California

Case No. CV 94 1317 ER (JGx)

Edward Gilliam,)

Plaintiff) SUMMONS

v.)

Moreno Valley Unified)

High School District;)

Moreno Valley Union High)

School District Board of Education)

Members; Moreno Valley Publishing)

Company; Does 1 through 20)

Inclusive)

Defendants)

_____)

To the above-named Defendant:

You are hereby summoned and required to serve upon

Michael Weiss,

plaintiff's attorney, whose address is

2049 Century Park East #1100, Los Angeles, CA 90067

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will

be taken against you for the relief demanded in the complaint.

DATE: MAR 01 1994

CLERK, U.S. DISTRICT COURT

By DENISE HARRELL,

Deputy Clerk

SEAL

[Seal of the U.S. District Court]

LIEBMAN, REINER, McNEIL & WALSH

ATTORNEYS AT LAW

April 21, 1994

Mr. Michael Weiss

2049 Century Park East, Suite 1100

Los Angeles, CA 90067

RE: EDWARD GILLIAM v. MORENO VALLEY U.H.S.D.

Dear Mr. Weiss:

In regard to your fax of April 8, 1994, please be advised of the following. Upon our receipt of this facsimile on Monday morning, April 11, 1994, my associate Judith Anderson placed a call to your office. She was advised that you were on another call but would call back momentarily. To this date you have not returned the call. The purpose of my correspondence today is to advise you that you have not yet met our simple

request for a proof of service. Although you have attached a correspondence from your attorney service to you regarding their fees, we do not believe this is a document you can file with the court to prove that you served the complaint and summons on the complaint upon any party on this action.

We really are entitled to see a copy of the proof of service as we have been informed that a filed complaint has never been served on any party in this action. Please kindly comply with our request or advise us as to why you cannot.

Sincerely,

LIEBMAN, REINER, McNEIL & WALSH

A Professional Corporation

_____/s/_____

J. MICHAEL DECLUES

JMD:sc

MICHAEL WEISS

ATTORNEY AT LAW

2049 CENTURY PARK EAST, SUITE 1100

LOS ANGELES, CALIFORNIA 90067

TELEPHONE (310) 556-7996

Liebman, Reiner McNeil & Walsh

4-22-94

Gilliam v. Moreno Valley School District

Dear Michael Declues,

I have been informed that the Moreno Valley School District Board of Trustees voted this week to give the above-mentioned case to O'Melveny & Myers. Please check this out. I have no obligation to provide you or O'Melveny with proof of service; but, I am obliged to communicate and deal only with the attorney who is currently representing the defendant in this case.

Very Truly Yours,

_____/s/_____

Michael Weiss, Attorney for Gilliam

LIEBMAN, REINER, McNEIL & WALSH

ATTORNEYS AT LAW

April 29, 1994

VIA FACSIMILE AND U.S. MAIL

Mr. Michael Weiss

2049 Century Park East, Suite 1100

Los Angeles, CA 90067

RE: EDWARD GILLIAM v. MORENO VALLEY U.H.S.D.

Dear Mr. Weiss:

Be advised that this correspondence is in response to yours of April 22, 1994 and to memorialize our telephone conversation of April 27, 1994 regarding the above captioned matter.

Based upon your request, I once again reconfirm for you that this law office still represents the Moreno Valley Unified School District and its Board of Education in this litigation. I do find it interesting that you claim to have some good source regarding actions taken by the Board of Education in closed session.

In our above-mentioned telephone conversation, you indicated that you have already proceeded to file an application for a request to enter default against the Moreno Valley Unified School District. You also indicated that you would be forwarding to me some documentation in this regard. I must adamantly point out that I find such conduct on your part to be completely unprofessional and unethical. My office

has engaged in a series of conversations and writings with you in an attempt to simply clarify the issue of service upon the District and to achieve an agreed upon date as to when a responsive pleading would be due. You had even requested in one correspondence that we provide you with additional time to address this issue since you were engaged in trial.

Therefore, for me now to discover that you have filed such a request to enter default while pretending to engage in good faith negotiations between our respective offices on this issue of service is reprehensible. If you do not immediately vacate the request to enter a default judgment, then I will of course file a motion to vacate the request to enter a default judgment as well as seek

appropriate sanctions against you. Additionally, your actions will be reported to the State Bar.

This correspondence will also confirm my final effort to resolve the issue of service of process with you in order to prevent unnecessary litigation costs to both our clients. I would be willing to recommend to the District and its Board of Education that my office be designated as a proper agent to receive service of process of a conformed copy of the Summons and Complaint by mail with the response being due twenty days thereafter. This will save you the cost of utilizing another process server. If it is your intent to serve individual members of the Board of Education then this would have to be accomplished by personal service. This agreement

obviously would be based upon your vacating the request to enter default judgment.

If you have any interest in resolving said issue without judicial intervention, please contact the undersigned forthwith.

Sincerely,

LIEBMAN, REINER, McNEIL & WALSH

A Professional Corporation

_____/s/_____

J. MICHAEL DECLUES

JMD:sc

cc: KEENAN & Associates/Lynette Richards

MORENO VALLEY U.S.D./Robert C. Lee

Superintendent

SUBPOENA

[Caption]

You are commanded to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

All documents, including Board Minutes, and tape recordings concerning authorization to LIEBMAN, REINER, McNEIL & WALSH to represent anyone in this case.

Date and Time: June 8, 1994 4:45pm

Date: May 26, 1994

_____/s/_____

Michael Weiss

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

REQUEST FOR ORAL ARGUMENT ON NOTICE & MOTION FOR RECONSIDERATION OF SANCTIONS ORDER UPON PRIOR COUNSEL; DECLARATION OF MICHAEL WEISS

TO THE HONORABLE COURT, ALL INTERESTED PARTIES AND THEIR ATTORNEYS

Please take notice that on August 29, 1994 at 10:00 am or as soon thereafter as the matter may be heard prior counsel of record SEEKS ORAL ARGUMENT on his motion to this Court to relieve him from the July 11, 1994 sanctions award it issued against him on the grounds of hardship, lack of due process, and lack of findings. This request will be based upon the moving papers, the Courts file herein and upon oral/written testimony offered at time of hearing.

Date: August 26, 1994

LAW OFFICE OF MICHAEL WEISS

By:_____/s/_____

Michael Weiss

1040 U.S. INDIVIDUAL INCOME TAX RETURN

1993

Michael A. Weiss

2880 Motor Ave

Los Angeles, CA 90064

Filing Status 1. Single

Income: 8a. Taxable interest income $3257.

12. Business income $11,916.

23 Add the amounts in the far right column for lines 7 through 22. This is your total income $15,173.

Adjusted Gross Income 31. $14,331.

REPORT OUT OF CLOSED SESSION

Mr. West reported out of Closed Session that the Board discussed Private School Placements, Hearing Officer Recommendations, Management Salary/Benefits, Conference with Legal Counsel-Pending Litigation, Pending Litigation on CLAS. It had been reported out in Closed Session on April 19, 1994 that O'Melveny & Myers would represent the District in the Gilliam versus Moreno Valley lawsuit. This was reconsidered and the Board designated that Mr. J. Michael Declues of Leibman, Reiner, McNeil & Walsh will continue to represent the District pending a decision from the JTPA on coverage.

BOARD MEMBERS

Frank West

Tracey B. Vackar

Bernadette Burks

Kelly Gillum

Charles W. Ledbetter

ADMINISTRATORS

Robert C. Lee, P/T

Nick Ferguson, P/T

Linda Wisher, P/T

Willie Williams,

Parents

RATIFICATION It was moved by Tracey B. Vackar and seconded by Kelly Gillum to accept the items discussed in Closed Session.

VOTE; AYE- 5 NAY-0 ABSTAIN-0 ABSENT-0

ROLL CALL: AYE-Burks AYE-Ledbetter AYE-Vackar AYE-Gillum AYE-West

ADJOURNED There being no further business to come before the Board of Education it was moved by Bernadette Burks and

seconded by Charles W. Ledbetter that the meeting be adjourned at 2:16 a.m. on May 4, 1994.

BB 9124(a)

Bylaws of the Board

Attorney

County Counsel or County District Attorney

On request of the Governing Board, the county counsel or district attorney will defend the district in any suit brought against it, without fee or any other charge, pursuant to Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code. The county counsel or district attorney will likewise defend any member of the Board

or any employee or servant of the district as provided in Part 7 (commencing with Section 995) of Division 3.6 of Title 1 of the Government Code. (Education Code 35203)

The Board may contract with the office of the county counsel or the county district attorney for additional services, at a fee and in a manner agreed upon by the Board and the office of the county counsel or district attorney. (Education Code 35206)

Attorney in Private Practice

The Board may appoint an attorney in private practice as an employee or independent contractor, or use an administrative adviser for whatever purpose the Board deems appropriate, and fix and pay such attorney according to the contract. The district shall first

obtain the written views of the district attorney or county counsel as to the merits of any litigation and the form of the proposed contract of employment with the private attorney.

Such written views shall not be required in those instances where the district attorney or county counsel represent the opposing party in any action for which the Board is contracting a private attorney. (Education Code 35204, 35205)

Legal Counsel

The Board may appoint a legal counsel to perform any of the following duties:

1. Render legal advice to the Superintendent or designee, Board and employees of the district.
2. Serve the Superintendent or designee in the preparation and conduct of school district litigation and administrative

proceedings.

3. Render advice on school bond and tax increase measures and prepare the necessary forms for the voting of these measures.

4. Other administrative duties as assigned by the Board and Superintendent or designee.

The Board may delegate authority to the district Superintendent to confer with the legal counsel at his/her discretion.

Legal Reference:

EDUCATION CODE

35041 Administrative adviser

35041.5 Legal counsel: Relieving duties of county counsel
and district attorney (CCD - Education Code 72419.5)

35204 Contract with attorney in private practice

35205 Contract for specialized legal services

35206 Contract for additional services from county counsel or district attorney

GOVERNMENT CODE

814 et seq. Liability of public entities and public employees (in general)

Bylaw MORENO VALLEY UNIFIED SCHOOL DISTRICT

adopted: December 5, 1989 Moreno Valley, California

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MOTION FOR RECONSIDERATION OF DECISION

COME NOW appellant Michael Weiss to move the Court to reconsider its May 30, 1996 decision.

1. Exhibit "1" is the courts docket sheets which indicate that appellant Weiss filed Notice of Settlement on May 10, 1996.

2. Based upon this Courts OSC re FRAP 38 sanctions appellant Weiss could read the writing on the wall and immediately came through with a settlement offer to come to terms of peace with appellee Moreno Valley Union High School District and resolve any and all differences and disputes. The settlement was consummated.

3. Appellant Weiss even requested the

Courts clerk to advise the panel of the settlement when he sent a facsimile notice and spoke directly to clerk Wayne Price.

4. With all due respect to the Honorable Panel I am having financial strains.

5. I respectfully request absolution. I verily state that I meant appellee no harassment. My request for default was based upon proof of service which I paid my process server $107 for. I thought it was good service. Magistrate Groh heard the default application and he did not even reach the issue whether appellee was represented by the law firm of McNeil, Lieberman et al. The sole and exclusive issue he heard and determined in open court was that service of Summons & Complaint was defective. Immediately after Magistrate Groh issued his

determination I was substituted out of the case, left for vacation and came back learning of the sanctions against me. Never once did I get the opportunity to appear before Judge Rafeedie before he issued sanctions against me.

6. I solemnly assure this Honorable Court of good faith on my part now and in the future. I respectfully request the Courts indulgence. I would not have settled with appellee if I did not have good faith, a sense of integrity, and a desire to make things right.

7. I am a solo practitioner of small but ambitious stature who desires peaceful resolution of this appeal. I take pride in my reputation, and ask this Court to let me keep it free from the blemish and stain of sanction. Any sanction order over $1000 must be reported to the State

Bar who keeps track of same and demands explanation. Never again shall this Court hear of any similar problem concering me like this again, and that's a promise.

Date: June 28, 1996

LAW OFFICE OF MICHAEL WEISS

By:_____/s/_____

Michael Weiss, Attorney for Appellant

GENERAL DOCKET FOR

Ninth Circuit Court of Appeals

Court of Appeals Docket #: 94-56382

Fled: 10/20/94

Nsuit: 3442 Jobs (Fed)

Gilliam, et al v. Moreno Valley Union, et al

Appeal from: Central District of California, Los Angeles

Lower court information:

District: 0973-2 :

CV-94-01317-ER(JGx) court reporter:

Mary Tucker, Court Reporter

presiding judge: Edward Rafeedie, Judge

Date Filed: 3/1/94

Date order/judgment: 8/31/94

Date NOA filed: 9/6/94

- - - - - - - - - -

Fee status: paid

- - - - - - - - - -

Prior cases:

None

Current cases:

None

EDWARD GILLIAM

Plaintiff

MICHAEL WEISS

Michael A. Weiss, Esq.

Appellant

(213) 556-7996

[COR LD NTC prs]

2049 Century Park East Suite 1100

Los Angeles, CA 90067

v.

MORENO VALLEY UNION HIGH

Gregory A. Wille, Esq.

SCHOOL DISTRICT

714/647-1776

Defendant - Appellee

Suite 150

[COR NTC ret]

1651 E. Fourth Street

Santa Ana, CA 92701

MORENO VALLEY UNIFIED SCHOOL

J. Michael Declues, Esq.

DISTRICT BOARD OF EDUCATION

714/547-0777

MEMBERS, et al.

Suite 1200

Defendant - Appellee [COR LD NTC ret]

LIEBMAN, REINER, NACHISON & WALSH

1851 E. First St.

Santa Ana, CA 92705

Gregory A. Wille, Esq.

(See above) [COR NTC ret]

EDWARD GILLIAM

Plaintiff

and

MICHAEL WEISS

Appellant

v.

MORENO VALLEY UNION HIGH SCHOOL DISTRICT; MORENO VALLEY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION MEMBERS, et al.

Defendants - Appellees

10/20/94 DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): y. setting

schedule as follows: CADS due 11/3/94; appellant's designation of RT is due 9/16/94; appellee's designation of RT is due 9/26/94; appellant shall order transcript by 10/6/94; court reporter shall file transcript in DC by 11/7/94; certificate of record shall be filed by 11/14/94; appellant's opening brief is due 12/23/94; appellees' brief is due 1/23/95,; appellants' reply brief is due 2/6/95; [94-56382] (dr)

11/14/94 Filed certificate of record on appeal RT filed in DC 10/05/94 [94-56382] (rmw)

12/27/94 Filed original and 15 copies Appellant Michael Weiss opening brief (Informal: no) 32 pages and five excerpts of record served on 12/23/94 [94-56382] (wp)

12/30/94 Filed Promo motion and

deputy clerk order: Deputy Clerk: lp) The ct is in receipt of aplt's mtn for judicial notice The mtn is construed as a mtn to supplement the record. Construed as such the mtn and any response shall be referred to the merits panel. [94-56382] (wp)

1/23/95 Filed original and 15 copies appellee Moreno Valley Union, Moreno Valley Unifie's 24 pages brief, served on 1/22/95 [94-56382] (wp)

3/21/95 Filed certified record on appeal in 1 Vols.(total): 1 RTs (Orig) [94-56382] [94-56382] (wp)

11/13/95 Calendar check performed [94-56382] (dd)

1/12/96 Calendar materials being prepared. [94-56382] [94-56382] (th)

1/22/96 CALENDARED: Pasadena Mar. 7, 1996 9:00 a.m. Courtroom 1

[94-56382] (dd)

3/7/96 ARGUED AND SUBMITTED TO James R. BROWNING, J. C. WALLACE, Jerome FARRIS [94-56382] (lu)

4/11/96 Filed order (James R. BROWNING, J. C. WALLACE, Jerome FARRIS,): Pursuant to Federal Rule of Aplt Procedure 38 notice is hereby given and Weiss has 28 days to explain in writing why he should not be sanctioned for filing a frivolous appeal. [94-56382] (wp)

5/10/96 Filed Appellant Michael Weiss's response to FRAP 38 order to show cause served on 5/8/96 (PANEL) [94-56382] (wp)

5/30/96 Filed Appellant Michael Weiss's notice of settlement. (PANEL) [94-56382] served on 5/21/96 [3016779] [94-56382] (wp)

6/20/96 FILED MEMORANDUM

DISPOSITION: AFFIRMED Pursuant to FRAP 38 we award Moreno double costs for having to respond to Weiss's frivous appeal. (Terminated on the Merits after Oral Hearing; Affirmed; Written, Unsigned, Unpublished. James R. BROWNING; J. C. WALLACE, author; Jerome FARRIS.) FILED AND ENTERED JUDGMENT. [94-56382] (wp)

MICHAEL WEISS

ATTORNEY AT LAW

To: Mr Wayne Price

May 24, 1996

NOTICE OF SETTLEMENT

94-56382

CV-94-1317ER

Moreno Unified School District and

Michael Weiss have settled and resolved their difference. Formal document will come to you by mail within next 3-4 days.
Michael Weiss

ON APPEAL FROM A JUDGMENT OF THE DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COME NOW the appellee MORENO VALLEY UNIFIED HIGH SCHOOL DISTRICT and appellant MICHAEL WEISS to give notice to the Court that they have settled and completely resolved any and all of the disputes on appeal in this case between themselves.

Date: May 21, 1996

WALSH & DECLUES

By:_____/s/_____

Michael Declues, Attorney

for Appellee

Date: May 21, 1996

LAW OFFICE OF MICHAEL WEISS

By:_____/s/_____

Michael Weiss, Attorney

for Appellant